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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1058

DR. GIULIO BRUNI,

Petitioner,

vs.

THE DEPARTMENT OF REGISTRATION AND EDUCATION OF THE STATE OF ILLINOIS, PAUL PASSINI, PHILIP G. THOMSEN, CHAIRMAN KENNETH H. SCHNEPP, WILLIAM JOHNSON, ROBERT E. WALPER, DALE E. RICHARDSON, GEORGE GEE JACKSON, JOHN WATSON, DIRECTOR, FRANK PETRONE, TECHNICAL ADVISOR, AND BURTIS MONTGOMERY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

The Petitioner, Dr. Giulio Bruni, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Illinois entered upon the denial of a Petition for Rehearing on November 26, 1974 in *Dr. Giulio Bruni* v. *The Department of Registration and Education of the State of Illinois, et al.*, 59 Ill. 2d 6, Appendix A, *infra* pp. A1-A6.

OPINIONS BELOW.

The opinion of the Supreme Court of Illinois is reported at 59 Ill. 2d 6 and is reproduced as Appendix A hereto, *infra*, pp. A1-A6. The opinion of the Appellate Court of Illinois, First District, is reported at 8 Ill. App. 3d 321 (1972) and is reproduced as Appendix B hereto, *infra*, pp. A7-A22. The opinion of the Circuit Court of Cook County is not reported but is reproduced as Appendix C, *infra*, pp. A23-A24.

JURISDICTION.

The opinion of the Supreme Court of Illinois was filed September 27, 1974. The denial of the Petition for Rehearing was entered by the Supreme Court of Illinois on November 26, 1974. Jurisdiction of this Court is conferred by 28 U. S. C. Section 1257(3).

QUESTION PRESENTED.

Has the Petitioner, an Illinois physician, been denied equal protection and due process under the Fourteenth Amendment of the United States Constitution by virtue of the decision of the Supreme Court of Illinois which has applied the Medical Practice Act of that State to permit revocation of his license for the conviction of a federal felony even though revocation or suspension would not have been permitted for the commission of *any* Illinois misdemeanor or sister-state misdemeanor, no matter how serious, and even though unrelated to the practice of his profession?

STATUTES INVOLVED.

> The Department may revoke or suspend the license, certificate or state hospital permit of any person issued under this Act, or issued under any other Act in this State, to practice medicine . . . upon any of the following grounds:

* * * * *

(2) Conviction of a felony; . . .

(Ill. Rev. Stats., 1965, ch. 91 § 16a.2)

The Department may revoke or suspend the license, certificate or state hospital permit of any person issued under this Act or under any other act in this State to practice medicine . . . upon any of the following grounds:

* * * * *

(2) Conviction in this or any other State of any crime which is a felony under the laws of this State or conviction of a felony in a federal court; . . .

(Ill. Rev. Stats., 1969, ch. 91 § 16a.2)

STATEMENT OF THE CASE.

Background.

In 1965 the Petitioner, a licensed physician, was convicted of violating federal counterfeiting and conspiracy statutes. 18 U. S. C. §§ 371, 471, 472 and 474. One year later the Respondent, Department of Registration and Education of Illinois, the state agency having jurisdiction of the licensing of physicians, instituted a proceeding to revoke Petitioner's license under a provision of the Medical Practice Act (*supra*, p. 2) which permitted revocation for the "conviction of a felony"—without more. Ill. Rev. Stats., 1965, ch. 91, § 16a.

The statutes under which the Petitioner was found guilty were all felonies tested by the federal definition. Title 18, U. S. C. § 1 defines a "felony" as "any offense punishable by death or imprisonment for a term exceeding one year." Thus, the federal definition of felony turns on the maximum possible sentence and disregards the discretionary alternative of a fine only.

The four federal statutes under which Petitioner was found guilty permit the imposition of a fine only, in addition to penitentiary sentences in excess of one year. The Illinois decisional law in 1965 was that if a statute permitted the imposition of a fine, then the offense was a misdemeanor and not a felony. See,

e.g. People v. *Novotny*, 41 Ill. 2d 401, 403 (1935); *People* v. *Stravakas*, 335 Ill. 570, 581-82 (1929); *People ex rel. Ward* v. *Tomek*, 54 Ill. App. 2d 197, 200 (1st Dist. 1965). The Illinois definition—when applied to the federal counterfeiting statutes under which the Petitioner was convicted—mandated the conclusion that the convictions were Illinois misdemeanors and not felonies.

The Proceedings in the Circuit Court of Cook County.

The Respondent, Department of Registration and Education, entered an order revoking Petitioner's license to practice medicine. (Abst. 11-12.)[1] Petitioner filed his complaint in the Circuit Court of Cook County for Administrative Review under the applicable Illinois statute. (Abst. 1-12.) On August 11, 1966 a judge of the Circuit Court stayed the revocation until further order based upon an opinion of the Attorney General of Illinois (Abst. 16-23) in which the Attorney General concluded that a person convicted of an offense under a federal statute does not stand convicted of a felony within the Illinois medical licensing statutes providing for revocation "upon conviction of a felony." The complaint for administrative review, which sought a reversal of the revocation order of the Respondent Department, alleged that its decision and findings violated the constitution of the State of Illinois and the United States. (Abst. 5.)

The Circuit Court of Cook County reversed the revocation order of the Respondent Department of Registration and Education (Abst. 121-122, Appendix C, *infra*, p. A23) on two grounds: (1) The word "felony" as used in the then-existing Medical Practice Act was "restricted to a conviction which would be a felony under Illinois law"; and (2) the 1967 amendment to the same Act could not be retrospectively applied. The

1. The Abstract of Record as filed both in the Appellate Court of Illinois, First District, and the Supreme Court of Illinois has been certified by the Clerk of the Supreme Court of Illinois. References to it are preceded by "Abst." The Abstract appears at page 2 of the Record (hereafter "Record").

Court also said it was not necessary to reach the *ex post facto* constitutional questions because the "provisions of Chapter 131, Section 4 have been extended to civil as well as criminal proceedings and are applicable here." (Abst. 123, Appendix C, *infra* p. A24.) The Respondent appealed.

The Appellate Court of Illinois, First District, reversed (Mr. Justice Stamos dissenting) on the essential ground that the 1967 amendment to the Medical Practice Act simply "made explicit what had been implicit in the statute since 1923: a federal felony conviction is ground for revocation of an Illinois license to practice medicine, even though the federal crime is not a felony in Illinois." 8 Ill. App. 3d at 327, Appendix B, *infra*, p. A13.

Petitioner filed in the Supreme Court of Illinois a Petition for Appeal as a Matter of Right, or, in the Alternative, for Leave to Appeal. (Record page 1.) In his Petition under Illinois Supreme Court Rule 317[2] the Petitioner argued that the decision of the Appellate Court resulted in an unconstitutional deprivation of his livelihood on two grounds: (1) The Court had effectively applied a 1967 Illinois statute, clearly punitive or penal in nature, to revoke his medical license for acts done *before* the amendment; and (2) it had construed the statute in such a way as to result in an invidious distinction and discrimination between those convicted of federal felonies and Illinois misdemeanors with no rational connection between this distinction and the object sought to be accomplished by the statute. The Petition argued that these kinds of distinctions could not pass muster under recent decisions of this Court and violated the Due Process and Equal Protection clauses of the Fourteenth Amendment and, in addition, the application of the amendment violated the *ex post facto* prohibitions of the

2. "Appeals from the Appellate Court shall lie to the Supreme Court as a matter of right in cases in which a question under the Constitution of the United States or of this State arises for the first time in and as a result of the action of the Appellate Court. * * *" Supreme Court Rule 317, Ill. Rev. Stats., 1973, ch. 110A, § 317.

Illinois and United States Constitutions. Ill. Const. (1970), Article 1, § 16; Ill. Const. (1870), Article II, § 14; United States Constitution, Article I, § 9. Petition, pages 9-13. The Petition for Leave to Appeal was granted by the Supreme Court of Illinois on May 31, 1973. (Record page 3.)

The Supreme Court of Illinois affirmed the decision of the Appellate Court, 59 Ill. 2d 6, Appendix A, *infra*, pp. A1-A6, on September 27, 1974. The opinion of the Supreme Court reaches none of the constitutional issues presented by the Petition for Leave to Appeal or in Petitioner's briefs, but instead disposed of the case solely on the basis of rules of construction.

Petitioner then filed a Petition for Rehearing. (Record page 6.) In the Petition, Petitioner contended that the construction of the amendment to the Medical Practice Act, as adopted by the Supreme Court of Illinois, raised "substantial Due Process and Equal Protection questions." It was argued that there simply was no rational basis for permitting the revocation of a doctor's license for the commission of the most trivial federal felony and bar revocation for the most serious of Illinois misdemeanors. Petition for Rehearing, page 8.

The Petition for Rehearing was denied on November 26, 1974. (Record page 7.) The mandate was then recalled and stayed on December 11, 1974, pending the filing of this Petition. (Record page 8.)

REASONS FOR GRANTING WRIT.

This case focuses once again upon the absurdities which can, and do, result when a jurisdiction attempts to attach consequences to words as expansive, ambiguous and elusive as "felony" and "misdemeanor." The decision of the Supreme Court of Illinois does, and will in the future, produce absurd, to say nothing of unconstitutional, results.

There simply is no rational connection between the commission of all federal felonies and the revocation of a physician's

license. For example, a physician who forges a postal card has committed a federal felony (18 U. S. C. § 501) and, under the decision of the Supreme Court of Illinois, as it has interpreted the 1965 Medical Practice Act as illuminated by the 1967 amendment, would be a ground for license revocation. In 1971 forgery was an Illinois misdemeanor. Ill. Rev. Stats., 1971, ch. 38, § 17-3. Thus, if an Illinois-licensed physician had forged a $100,000 check the State could not revoke his license. The invidious and discriminatory result produced by the Supreme Court of Illinois' decision is shown by adding one fact to the hypothetical. Had the same doctor with the same check drawn it on a bank just across the Illinois-Indiana line, he then would have "caused" its interstate transportation, would be guilty of a federal felony and his license could be revoked. 18 U. S. C. § 2314, and see, *e.g.*, *Hall* v. *United States*, 372 F. 2d 603 (8th Cir., 1967), *cert. denied*, 387 U. S. 923, *rehearing denied*, 389 U. S. 981.

The result produced by the Supreme Court of Illinois is to hold that Illinois physicians who commit serious Illinois misdemeanors, or misdemeanors in a sister state, are immune from license revocation proceedings, but physicians who commit any federal felony will have their licenses revoked. This is a double standard. It is a deprivation of equal protection. This is not a reasonable basis for classification which bears a fair and substantial relation to the object sought to be attained by the Medical Practice Act.

This Court, reviewing the Illinois bail statutes, said that a "statutory classification based upon suspect criteria or affecting 'fundamental rights' will encounter equal protection difficulties unless justified by a '*compelling* governmental interest.' " *Schilb* v. *Kuebel*, 404 U. S. 357, 30 L. Ed. 2d 502, 511 (1971). (Emphasis in original text.) In *Rinaldi* v. *Yeager*, 384 U. S. 305, 16 L. Ed. 2d 577 (1966), the Court struck down a New Jersey statute which withheld a prison inmate's pay until he had paid for the cost of his trial transcript as opposed to those

who were fined, given suspended sentences or placed on probation. Mr. Justice Stewart, speaking for the Court, said (384 U. S. at 308-309, 16 L. Ed. 2d 580):

> The Equal Protection Clause requires more of a state law than nondiscriminatory application within the class it establishes. * * * It also imposes a requirement of some rationality in the nature of the class singled out. To be sure, the constitutional demand is not a demand that a statute necessarily apply equally to all persons. * * * Hence, legislation may impose special burdens upon defined classes in order to achieve permissible ends. But the Equal Protection Clause does require that, in defining a class subject to legislation, the distinctions that are drawn have "some relevance to the purpose for which the classification is made." Baxstrom v. Herold, 383 U. S. 107, 111, 15 L. Ed. 2d 620, 624, 86 S. Ct. 760; Carrington v. Rash, 380 U. S. 89, 93, 13 L. Ed. 2d 675, 678, 85 S. Ct. 775; Louisville Gas Co. v. Coleman, 277 U. S. 32, 37, 72 L. Ed. 770, 773, 48 S. Ct. 423; Royster Guano Co. v. Virginia, 253 U. S. 412, 415, 64 L. Ed. 989, 990, 40 S. Ct. 560. (Emphasis added.)

In *Mayer* v. *City of Chicago*, 404 U. S. 189, 30 L. Ed. 2d 372 (1971), this Court invalidated an Illinois Supreme Court rule which drew a distinction between felony and non-felony cases in the right of a defendant to obtain a free trial transcript. "The distinction between felony and non-felony offenses drawn by Rule 607(b) can no more satisfy the requirements of the Fourteenth Amendment than could the like distinction in the Wisconsin law, held invalid in *Groppi* v. *Wisconsin*, 400 U. S. 505, 27 L. Ed. 2d 571, 91 S. Ct. 490 (1971) which permitted a change of venue in felony but not in misdemeanor trials. * * * The distinction drawn by Rule 607(b) is, therefore, an 'unreasoned distinction' proscribed by the Fourteenth Amendment." 404 U. S. at 196, 30 L. Ed. 2d at 379. As this Court emphasized in *Reed* v. *Reed*, 404 U. S. 71, 30 L. Ed. 2d 225, 229 (1971), "The Equal Protection Clause of [the Fourteenth] Amendment does, however, deny to States the

power to legislate that different treatment be accorded to persons placed into different classes on the basis of criteria wholly unrelated to the objective of that statute." 404 U. S. 76.[3]

The decisions of this Court have demanded "strict scrutiny" of statutes of the kind here at issue. The Illinois Supreme Court's disposition of the issue on grounds of statutory construction ignores the teachings of these cases. See, *e.g.*, *Bell* v. *Burson*, 402 U. S. 535 (1971), 29 L. Ed. 2d 90; *Vlandis* v. *Kline*, 412 U. S. 441 (1973); 37 L. Ed. 2d 63; *United States Department of Agriculture* v. *Murry*, 413 U. S. 508, 37 L. Ed. 767; and *Cleveland Board of Education* v. *Le Fleur*, ... U. S. ....., 94 S. Ct. 791 (1974), 39 L. Ed. 2d 52.

A three-judge court in *Butts* v. *Nichols*, 381 F. Supp. 573 (D. C. S. D., Iowa, 1974), had before it a state statutory

3. The felony-misdemeanor dichtomy as applied to medical, dentistry and law licenses has been the subject of substantial state litigation. See *e.g.*, *Matter of Donegan*, 282 N. Y. 285 (1940), in which the Court of Appeals held that an attorney could not be disbarred for a mail fraud conviction on the ground that the term "felony" excluded those federal felonies which were cognizable by New York laws as misdemeanors or not at all. 282 N. Y. at 288-292. The Supreme Court of Minnesota held in *State ex rel. Arpagus* v. *Todd*, 225 Minn. 91 (1947), that a defendant convicted of a federal felony which was classified, however, only as a misdemeanor under Minnesota law could not result in the forefeiture of civil rights. See also *Elder* v. *County Election Bd. of Cherokee Co.*, 326 P. 2d 776 (1958); *People* v. *Enlow*, Colorado, 310 P. 2d 539 (1957); *People ex rel. Attorney General* v. *Brayton*, 100 Colo. 92, 65 P. 2d 1438 (1937); *In re Dampier*, 46 Ida. 195, 267 Pac. 452 (1928); and *State ex rel. Oregon Bar Ass'n.* v. *Prendergast*, 84 Ore. 307, 164 Pac. 1178 (1917). For the kinds of definitional difficulties which arise when words like "felony" and "misdemeanor" are used, see *Lacey* v. *People*, Colo. 442 P. 2d 402 (1968), which involved a New Jersey conviction and in which the Court noted "We are advised that there is no such thing as a felony in New Jersey, and that crimes in that state are classified as either misdemeanors, or high misdemeanors." 442 P. 2d at 406. The new Illinois Unified Code of Corrections, effective January 1, 1973, contains definitions not only for felonies and misdemeanors but also for an "offense" which means "conduct for which a sentence to a term of imprisonment or to a fine is provided by any law of this State or by any law, local law or ordinance of a political subdivision of this State, or by any order, rule or regulation of any governmental instrumentality authorized by law to adopt the same." Ill. Rev. Stats., 1973, ch. 38, § 1005-1-15.

scheme laying down conditions for civil service employment which included, in certain classifications, proscriptions against hiring persons "convicted of a felony." Section 365.17(5) of the Code of Iowa (1971), as amended.

The Court in *Butts* removed the operative word "felon" from the statute. Chief District Court Judge Hanson, writing for the Court, said (381 F. Supp. at 580):

> Without a more precise relationship of the means utilized by Section 365.17(5) to achieve the desired legislative end, this statute clearly violates the tenet of Equal Protection analysis that the exclusion (or inclusion) of members in a class is "necessary to achieve the articulated state goal." Kramer v. Union Free School District, No. 15, 395 U. S., 621, 632, 89 S. Ct. 1886, 1892, 23 L. Ed. 2d 583 (1969). By enacting a blanket prohibition on all ex-felons, a clearly anomalous situation results. For example, persons convicted of such diverse crimes as desertion of a spouse (Section 731.1, Code of Iowa (1973) or leading a life of lewdness (Section 724.1, Code of Iowa 1973)) would be sentenced as felons, and hence would lose civil service eligibility, no matter what the nature of their job. In contrast, an individual *convicted of a crime clearly involving dishonesty, such as petty larceny* (Section 709.2, Code of Iowa (1973)) *would not be a felon, and hence would be eligible for a number of civil service jobs wherein such "criminal propensities" would pose a threat to the public* (e.g., an inspector with free access to persons' homes). (Emphasis added.)

It is believed the reasoning of the Court in *Butts* applies here. The Medical Practice Act of Illinois, both in its language of 1965 and as amended in 1967, which draws the state felony-state misdemeanor-federal felony distinctions should have received the kind of strict scrutiny under due process and equal protection analyses commanded by this Court in recent years. It did not receive such scrutiny.

Amorphous words like "felony" and "misdemeanor" can no longer meet Due Process and Equal Protection standards when

states use them to affect substantive rights. It is believed this case affords an opportunity to put an end to the application of these words and replace them with words and definitions containing the certainty and precision required by the recent decisions of this Court.

CONCLUSION.

Petitioner respectfully requests that this petition for a writ of certiorari be granted.

Respectfully submitted,

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APPENDIX A.

Docket No. 45586—Agenda 22—May, 1974.

DR. GIULIO BRUNI, Appellant, v. THE DEPARTMENT OF REGISTRATION AND EDUCATION *et al.*, Appellees.

MR. JUSTICE RYAN delivered the opinion of the court:

The defendant Department of Registration and Education, on June 22, 1966, entered an order revoking the certificate of registration of Dr. Giulio Bruni to practice medicine in the State of Illinois. The defendant, pursuant to section 17a of the Medical Practice Act (Ill. Rev. Stat. 1965, ch. 91, par. 16b-2), instituted proceedings under the provisions of the Administrative Review Act (Ill. Rev. Stat. 1965, ch. 110, par. 264) to review the proceedings of the Department. The circuit court of Cook County reversed the revocation order, directed the Department to renew the plaintiff's license, and enjoined it from interfering with the plaintiff's right to practice medicine. The appellate court, with one justice dissenting, reversed the judgment of the circuit court. (8 Ill. App. 3d 321.) A part of the order of the circuit court not involved in this appeal was affirmed. We granted the plaintiff's petition for leave to appeal.

On April 15, 1965, plaintiff, Dr. Giulio Bruni, who had been licensed to practice medicine in this State since August 27, 1953, was adjudged guilty in the United States District Court for the Eastern District of Wisconsin of the offense of passing counterfeit Federal Reserve notes knowing the same to be falsely made and counterfeit in violation of section 472 of title 18 of the United States Code (18 U. S. C. sec. 472 (1964)). He was sentenced to five years' imprisonment and fined the sum of $10,000.

On May 6, 1965, in the District Court for the Northern District of Illinois, Eastern Division, the plaintiff was convicted

of the offense of conspiracy, possession of plates with intent to use such plates in forging and counterfeiting obligations and securities of the United States and keeping in his possession forged and counterfeited obligations of the United States in violation of 18 U. S. C. secs. 471, 472, 474, and 371 (1964). He was sentenced to five years' imprisonment on this conviction. Each section of the United States Code under which the defendant was convicted provides a penalty of a fine or imprisonment for a period exceeding one year or both. These offenses are felonies under the Federal classification of 18 U. S. C. sec. 1. However, under Illinois law an offense punishable by imprisonment in the penitentiary or by fine only, or by imprisonment in the penitentiary and by fine in the discretion of the court, is classified as a misdemeanor. (*People* v. *Spector,* 28 Ill. 2d 554; *People* v. *Novotny,* 41 Ill. 2d 401; Ill. Rev. Stat. 1965, ch. 38, pars. 2-7, 2-11.) The Department of Registration and Education revoked the plaintiff's certificate of registration to practice medicine pursuant to section 16(2) of the Medical Practice Act (Ill. Rev. Stat. 1965, ch. 91, par. 16a(2)), which provides that the Department may revoke a license for "conviction of a felony."

The sole issue before this court is whether the provision of the Medical Practice Act in 1965 authorizing the Department to revoke a license for "conviction of a felony" authorized the Department to revoke the plaintiff's license for conviction of an offense which is made a felony under the Federal scheme of classification. Until the adoption of the Criminal Code of 1961 counterfeiting was a felony under the laws of this State. (Ill. Rev. Stat. 1959, ch. 38, pars. 277, 278, 283, 284.) However, the drafters of the Criminal Code of 1961 omitted all reference to the offense, and counterfeiting is not now a crime in Illinois except insofar as it constitutes a violation of the analogous statutory offense of forgery. The Committee Comments indicate that it was intended to incorporate at least some of the former sections relating to counterfeiting in section 17-3 of the Criminal Code. (S. H. A. ch. 38, sec. 17-3.) This section provided for

the discretionary penalty for forgery of a fine not to exceed $1,000 or imprisonment in the penitentiary from 1 to 14 years or both, and the offense was, under Illinois classification, a misdemeanor. The plaintiff contends that the Illinois classification must be applied and thus the crime of which he was convicted was not a felony and his license was wrongfully revoked.

The dissenting justice in the appellate court, finding the offense for which Dr. Bruni was convicted was analogous to the offense of forgery, a misdemeanor under Illinois law (Ill. Rev. Stat. 1965, ch. 38, par. 17-3), was of the opinion that the revocation was not authorized. Though not relevant to this opinion we note that section 17-3 of the Criminal Code was later amended to conform the penalties to the Unified Code of Corrections (Ill. Rev. Stat. 1973, ch. 38, par. 1001-1-1 *et seq.*), and the offense of forgery is now a Class 3 felony.

However, we need not decide whether the offense of counterfeiting constituted a felony in Illinois in 1965, for accepted principles of statutory construction disclose that the General Assembly intended to include within the cause for revocation for "conviction of a felony" conviction of a crime classified as a felony under Federal law.

Of significance in this case is the request in 1966 by the Director of the Department of Registration and Education to the Attorney General for an opinion as to whether the term "conviction of a felony" as a cause for revocation of a license under the Medical Practice Act included convictions in the Federal court for Federal income tax violations where the penalty provided by Federal law was both fine and imprisonment. The Attorney General in his opinion stated the words "conviction of a felony" standing by themselves and "with no reference to the laws of any other state or the Federal government would seem to require an application for situations wherein an offense was committed under the laws of the State of Illinois." Thus, the opinion of the Attorney General would deny the application of this cause for revocation to convictions in sister States or

under Federal law. The Director in his request to the Attorney General stated that "conviction of a felony" was cause for revocation of license under 18 different laws administered by the Department.

At the next session of the General Assembly following the rendition of this opinion by the Attorney General the Medical Practice Act was amended. The "conviction of a felony" cause found in the 1965 statute was changed to read "Conviction in this or another State of any crime which is a felony under the laws of this State or conviction of a felony in a federal court." (Ill. Rev. Stat. 1967, ch. 91, par. 16a(2).) We have not been informed of the 18 different laws referred to by the Director wherein conviction of a felony was a stated cause for revocation of a license, and an exhaustive survey has not been deemed necessary. However, a cursory examination of the 1965 statute and a comparison of certain sections of those found in the 1967 statutes reveal that the "conviction of a felony" cause for revocation of license found in the 1965 statutes was changed to exactly the same language used in the 1967 amendment to the Medical Practice Act in the statutes relating to the licensing of the practice of physical therapy (Ill. Rev. Stat. 1967, ch. 91, par. 22.15(7)); registered and practical nurses (ch. 91, par. 35.46(3)); practice of pharmacy (ch. 91, par. 55.7-6); practice of dentistry (ch. 91, par. 62(12)); practice of chiropody (ch. 91, par. 81(f)); practice of optometry (ch. 91, par. 105.13(a)); practice of veterinary medicine (ch. 91, par. 124.12(2)); architects (ch. 10½, par. 13(g)); professional engineers (ch. 48½, par. 49(3)); public accountants (ch. 110½, par. 44(a)); surveyors (ch. 133, par. 45(a)); funeral directors (ch. 111½, par. 73.10(b)) and embalmers (ch. 111½, par. 73.20(b)).

The principle has been established by this court that in ascertaining the intent of the General Assembly in the construction of a statute where no specific provision appears to aid such construction recourse may be had to the language of subsequent acts of the same law-making body. (*Lubezny* v. *Ball*,

389 Ill. 263.) And those subsequent acts of the General Assembly may be amendments to the act being construed. (*Modern Dairy Co.* v. *Department of Revenue,* 413 Ill. 55.) The plaintiff contends, however, that a statutory amendment creates a presumption that it was intended to change the law, citing *Scribner* v. *Sachs,* 18 Ill. 2d 400, and argues that since the 1967 amendment to the Medical Practice Act authorizes revocation of license for conviction of a Federal felony the prior provisions of the Act did not. This presumption is not conclusive, and a subsequent amendment does not necessarily indicate an intention to change the law as it previously existed. As stated in *Scribner:* "It is true that an amendment creates a presumption that it was intended to change the law as it formerly existed, [citations] but this presumption is not necessarily controlling and may be overcome by more persuasive considerations." 18 Ill. 2d at 411.

We consider more persuasive than the presumption of intent to change the law the fact that the Director of the Department of Registration and Education requested an opinion of the Attorney General as to the meaning of general language "conviction of a felony" as that term was used in the various acts administered by the Department. The request was followed by the opinion of the Attorney General in interpreting the term narrowly. This was immediately followed at the next session of the General Assembly by amendments to the various acts administered by the Department, inserting in each act the specific language defining the cause for revocation of license, "conviction in this or another state of any crime which is a felony under the laws of this state or conviction of a felony in a Federal court." This court has held that, where a court has construed terms used in an act and the legislature thereafter by amendment defines those terms, the presumption is that the court's construction was not in accord with the original intent of the legislature. (*People ex rel. Spitzer* v. *County of La Salle,* 20 Ill. 2d 18, 28; *Modern Dairy Co.* v. *Department of Revenue.*) The same

reasoning applies to the amendments to the various acts immediately following the requested Attorney General's opinion narrowly defining the term "conviction of a felony."

The weight to be given a subsequent amendment in the construction of a statute and whether it will be held to be a manifestation of an intent to change the law as it previously existed or only a clarification of its terms, of course, must depend upon the circumstances involved. The circumstances of this case compel us to conlude that the 1967 amendment was a clarification of the meaning of the term "conviction of a felony" and that term as it was contained in the Medical Practice Act in 1965 included conviction of a felony in a Federal court. That portion of the judgment of the appellate court which reversed the judgment of the circuit court of Cook County is affirmed.

Judgment affirmed.

APPENDIX B.

No. 55275

Dr. Giulio Bruni,
Plaintiff-Appellee,

vs.

The Department of Registration and Education of the State of Illinois, et al.,
Defendants-Appellants.

Appeal from Circuit Court Cook County.

Honorable Edward J. Egan, Presiding.

MR. JUSTICE LEIGHTON delivered the opinion of the court:

This is an appeal from three orders entered in an administrative review proceeding. The first, on May 18, 1970, vacated a dismissal for want of prosecution. The second, on May 25, 1970, reversed defendants' revocation of plaintiff's license to practice medicine. The third, on June 30, 1970, enjoined defendants from interfering with plaintiff's right to practice medicine. The issue is whether the trial judge erred in entering these orders.

I.

On April 15 and May 6, 1965, plaintiff Dr. Giulio Bruni, was convicted in two United States courts of offenses against federal conspiracy and counterfeiting statutes. He was given two concurrent terms of five years imprisonment and ordered to pay a fine of $10,000. On June 22, 1966, at the conclusion of administrative proceedings, defendants, Department of Registration and Education and members of its Medical Examining Committee, found these convictions to be felonies and revoked plaintiff's license to practice medicine in Illinois. Plaintiff then filed a complaint for administrative review of the revocation

order. On August 11, 1966, he applied for and obtained a stay of the revocation. A little more than three months later, on November 22, plaintiff entered a federal penitentiary to serve his sentences. In December 1966, his lawyer died. In June 1968, because of the stay order, plaintiff's license to practice medicine was renewed for the period ending July 1, 1970. In the meantime, plaintiff's administrative review complaint remained pending. Then, in a series of publication days (February 10, 11, 13, 14 and 17, 1969) as part of the circuit court trial call, notice was published in the Chicago Daily Law Bulletin that the complaint would be called for trial on February 17, 1969. Neither plaintiff, because he was in prison, nor his lawyer, because he was dead, responded to the call. Plaintiff's complaint was dismissed for want of prosecution. Notice was sent to the attorney who had died in December 1966.

On October 13, 1969, plaintiff was paroled. He returned to Chicago and resumed the practice of medicine. In January 1970, he discovered the dismissal of his administrative review complaint. He sought the advice of a new lawyer who, on April 22, 1970, pursuant to section 72 of the Civil Practice Act,[1] filed a petition to vacate the dismissal. The petition was allowed. Defendants contend this was error.

II.

A petition under section 72 of the Civil Practice Act invokes the equitable powers of the court to the end that a litigant's opportunity to be heard is not unjustly denied. (*Elfman* v. *Evanston Bus Co.*, 27 Ill. 2d 609, 190 N. E. 2d 348.) The petition is addressed to the trial court's sound discretion and its ruling will be reversed only on a showing that the discretion was abused. *Goldman* v. *Checker Taxi Co.*, 84 Ill. 2d 318, 228 N. E. 2d 177.

In this case, while he was in a federal prison away from Chicago, and after his lawyer of record was dead, plaintiff's

1. Ill. Rev. Stat. 1969, ch. 110, par. 72.

complaint was dismissed on notice published in a Chicago Law Bulletin. During hearing of the petition to vacate, the trial judge observed that existence of the order staying revocation of plaintiff's license and the later renewal of his medical license were factors which had to be considered in determining whether plaintiff was diligent in ascertaining the status of his complaint for administrative review after he was paroled. The trial court found that plaintiff had acted with diligence. We hold that it did not abuse its discretion when plaintiff's petition to vacate was allowed. The cases which defendants cite do not warrant a different conclusion.

III.

After plaintiff's complaint was reinstated, the trial judge heard the parties, conducted an administrative review and reversed the defendants' revocation of Plaintiff's license to practice medicine in Illinois. Defendants contend this was error. They argue that in 1965 plaintiff suffered felony convictions in two courts of the United States. They point out that under section 16a.2 of the Medical Practice Act,[2] conviction of a felony was a ground for revocation of plaintiff's license to practice medicine; and that in 1967, this section was amended to provide that one of the grounds for revocation of an Illinois medical license was conviction of a felony in a federal court.[3] Defendants insist that under the statute as it existed in 1965, illumined retrospectively by the 1967 amendment, each of plaintiff's convictions in the two United States courts was a "conviction of a felony" which authorized the license revocation they ordered after the 1966 administrative proceedings. Therefore, defendants conclude, the trial court erred in reversing their revocation of plaintiff's license to practice medicine.

Plaintiff contended in the trial court, and contends before us, that in 1965, conviction of a federal felony was not a ground

2. Ill. Rev. Stat. 1965, ch. 91, par. 16a.2.

3. Ill. Rev. Stat. 1967, ch. 91, par. 16a.2.

for revocation of a license within the meaning of section 16a.2 of the Illinois Medical Practice Act unless the federal crime was also a felony under Illinois law. Plaintiff argues that the trial court ruled correctly in determining that the 1967 amendment to the Medical Practice Act could not retrospectively validate revocations which occurred prior to its enactment. Therefore, plaintiff concludes, the order that reversed defendants' revocation of his license must be affirmed. These contentions require us to decide, in a case of first impression, whether, in 1965, a federal felony conviction was ground for revocation of an Illinois medical license even though the federal crime was not a felony in Illinois.

IV.

The grade of an offense is determined by the law of the jurisdiction where the crime is committed. (*State ex rel. Anderson* v. *Fousek* (Mont. 1932), 8 P. 2d 791, 793; *State ex rel. Beckman* v. *Bowman* (1930), 38 Ohio App. 237, 175 N. E. 891.) Plaintiff was convicted of counterfeiting and conspiracy to violate federal counterfeiting statutes,[4] each offense a felony as that term is construed by federal courts. See *Giammario* v. *Hurney*, 311 F. 2d 285, 287 (3rd Cir. 1962). The federal classification of this offense is consistent with history. In early English law, counterfeiting was treason, an infamous crime punishable by death. Perkins, Criminal Law 10, 356 (2d Ed. 1969). In the Illinois criminal codes, from 1874 until 1961, counterfeiting was a felony, an infamous crime. (Moore's Criminal Law Secs. 3 and 573 (2d ed. 1890); Ill. Rev. Stat. 1874, ch. 38, pars. 111, 279; Ill. Rev. Stat. 1959, ch. 38, pars. 283, 587.) Despite its recognition as an Illinois crime, counterfeiting is principally an offense against the federal government in its function as the issuer of money. Although variants of counterfeiting are found in state criminal codes, counterfeiting is essentially a federal crime. See *Fox* v. *Ohio*, 46 U. S. 410 (1847).

4. 18 U. S. C. §§ 371, 471, 472, 474.

For this reason, it is understandable that in 1961, without explanation, counterfeiting was omitted from the Illinois Criminal Code. See S. H. A., ch. 38, § 17-3, Committee Comments. This omission, however nice its history, does not require us to decide the status of counterfeiting in the law of Illinois in 1965.[5] Our decision involves the construction of a statute.

In 1965 when plaintiff was convicted of counterfeiting in the federal courts, section 16a.2 of the Illinois Medical Practice Act provided that "conviction of a felony" was a ground for revocation of a license to practice medicine.[6] There was no qualification that for revocation purposes a conviction outside Illinois was to be treated differently than one within. The unrestricted language of the statute conveyed the meaning that a conviction outside of Illinois was grounds for revocation of a license to practice medicine even though the offense involved was not a felony in Illinois. Then in 1967, the legislature amended section 16a.2 to provide that a license could be revoked for "[c]onviction in this or another State of any crime which is a felony under the laws of this State or conviction of a felony in a federal court * * *." This language recognizes that conviction of a

5. Nor need we determine whether forgery, as it is now found in the Illinois Criminal Code is an analogous offense. There are historical and practical difficulties in comparing counterfeiting with forgery.

Counterfeiting is a branch of forgery. 4 Bl. Comm. 88-9. Counterfeiting is an offense against governmental functions. Forgery is an offense against property. Perkins, Criminal Law 356-7 (2d ed. 1969). In Illinois, from 1874 to 1961, forgery and counterfeiting were companion offenses, both classified as felonies and infamous crimes. For the only reason we can discern (it is an offense against the federal government), counterfeiting was omitted from the code but forgery remained. The penalties for all forms of forgery were brought within the range "[n]ot to exceed $1,000 or imprisonment in the penitentiary from one to 14 years, or both." Ill. Rev. Stat. 1961, ch. 38, par. 17-3. This makes forgery a misdemeanor. *People* v. *Hise*, 1 Ill. App. 3d 43, 45, 272 N. E. 2d 264. Yet, forgery is today, as it always has been in Illinois history, an infamous crime. See Ill. Rev. Stat. 1961, ch. 38, par. 124-1.

6. This statute has been the law of Illinois since June 30, 1923 when the first Medical Practice Act was approved.

crime can be a felony in one state and a misdemeanor in Illinois.[7]

It is an established rule that in ascertaining the meaning of a statute, where no provision aids its construction, recourse may be had to the language of subsequent acts of the same lawmaking body. (*People ex rel. Malone* v. *Mueller*, 328 Ill. App. 593, 611, 66 N. E. 2d 516; compare *People ex rel. Holland Coal Co.* v. *Isaacs*, 22 Ill. 2d 477, 176 N. E. 2d 889.) This rule has a corollary principle: that in ascertaining legislative intent of statutory language, "[t]he whole record of the legislature, including acts passed at subsequent sessions, is open to ascertain such intent and, once ascertained, it will be given effect irrespective of priority of enactment." *Radford* v. *Cosmopolitan National Bank of Chicago*, 52 Ill. App. 2d 240, 246, 201 N. E. 2d 622; see *Gregory* v. *County of LaSalle*, 91 Ill. App. 2d 290, 234 N. E. 2d 66.

When this rule and its corollary are applied to the facts of this case, it appears that by the 1967 amendment the legislature made it clear that conviction of a crime in another state was ground for revocation of a license to practice medicine only if that crime is a felony in Illinois. But as to a "conviction of a felony in a federal court" there was no requirement that the offense be of that classification under Illinois law. By the

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7. In Illinois, a felony is an offense punishable by death or by imprisonment in the penitentiary. Ill. Rev. Stat. 1965, ch.38, par. 2-7. Illinois courts have held that if the punishment for an offense is discretionary: imprisonment in a penitentiary, in a local jail, a fine only, or imprisonment and fine, the offense is a misdemeanor. *People* v. *Stavrakas*, 335 Ill. 570, 167 N. E. 852; *People* v. *Bain*, 359 Ill. 455, 195 N. E. 42; *People* v. *Spector*, 28 Ill. 2d 554, 192 N. E. 2d 926; *People* v. *Hise*, 1 Ill. App. 3d 43, 272 N. E. 2d 264.

In Virginia, even though the punishment is discretionary and sentence is imprisonment in a local jail, the offense is a felony. *Fletcher* v. *Commonwealth*, 163 Va. 1007, 175 S. E. 895 (1934).

In Texas, "An offense which may-not must-be punishable by death or by confinement in the penitentiary is a felony; every other offense is a misdemeanor." Tex. Penal Code art. 47. For other cases, see Annot. 95 A. L. R. 1115 (1934).

language used, the legislature made explicit what had been implicit in the statute since 1923: a federal felony conviction is ground for revocation of an Illinois license to practice medicine, even though the federal crime is not a felony in Illinois. The legislature did this despite the commonly known fact that there are federal felonies which are not felonies by the law of Illinois.[8] And, significantly, in making clear its intent, the legislature took from section 16a.2 of the 1967 Illinois Medical Practice Act the unlimited words, "conviction of a felony." This use of the same unrestricted language shows that in 1965 "conviction of a felony" in section 16a.2, when used in connection with a federal conviction, meant conviction of any felony, without regard to its classification in Illinois criminal law. This being so, and having found that plaintiff was convicted of a felony in two federal courts, defendants properly applied the statute and revoked plaintiff's license to practice medicine in Illinois. (*Speer* v. *State* (Civ. App. Tex. 1937), 109 S. W. 2d 1150; compare *State Medical Board* v. *Rodgers,* 190 Ark. 266 (1935), 79 S. W. 2d 83; and see Annot., 12 A. L. R. 3d 1213.) For these reasons, we hold that the trial judge erred in reversing the administrative decision. The stay of the revocation should have been vacated and the decision affirmed.

Therefore, it follows that the trial judge also erred when he entered the order that enjoined defendants "[f]rom interfering in any respect with the right of the plaintiff Dr. Guilio Bruni from practicing medicine in all its branches under the Medical Practice Act of Illinois." Courts should not interfere

8. In federal law, a felony is an offense punishable by death or imprisonment for a term exceeding one year. 18 U. S. C. § 1. Federal courts have held that in determining whether a federal crime is a felony or misdemeanor, the test is the maximum possible sentence. *Giammario* v. *Hurney,* 311 F. 2d 285, 287 (3d Cir. 1962). For example, assault with intent to commit a felony, other than murder or rape, is punishable by a fine of not more than $3,000 or imprisonment for not more than ten years, or both. 18 U. S. C. § 113(b). This offense is a felony under federal law but a misdemeanor in Illinois. See *United States* v. *Anderson,* 425 F. 2d 330 (7th Cir. 1970).

with exercise of discretionary powers by executive officers unless there is such abuse of discretion that results in palpable injustice or injury. See *Eveland* v. *Board of Education of Paris Union School Dist.*, 340 Ill. App. 308, 92 N. E. 2d 182.

We affirm the vacature order of May 18, 1970. We reverse the orders of May 25 and June 30, 1970 which reversed defendants' revocation of plaintiff's license and enjoined them from interfering with plaintiff in the practice of medicine. The cause is remanded for further proceedings not inconsistent with the views expressed in this opinion.

Affirmed in part; reversed in part and remanded with directions.

SCHWARTZ, *J.*, Concurs.

STAMOS, *P. J.*, dissents and files an opinion.

MR. PRESIDING JUSTICE STAMOS DISSENTING.

I respectfully dissent from the majority opinion. As I interpret that opinion, it is premised solely upon the assumption that the 1967 amendment to Section 16a(2) of the Medical Practice Act manifested a legislative intent to "make explicit" and "make clear" the terms of that statute. This is an assumption without foundation in fact or in law.

No committee comments accompany the 1967 amendment. We are unaware of the content of any debates which may have preceded its passage. Prior to 1967 no Illinois court had interpreted the phrase "conviction of a felony" as used in Section 16a(2). In short, there exists no basis, other than the mere fact of amendment, upon which this court can determine whether the legislative intent attending that amendment was one of clarification or of alteration. Under these circumstances, we must adhere to the pronouncements of two Illinois Supreme Court cases.

In *People ex rel. Clark* v. *Village of Wheeling*, 24 Ill. 2d 267, 181 N. E. 2d 72, the Illinois Supreme Court was asked to

interpret the term, "highway," as used in Section 7-8 of the Revised Cities and Villages Act.* Subsequent to the decision in the trial court, the legislature had amended chapter 24 to obviate future uncertainty as to the meaning of that term. The Supreme Court, however, held that the amendment would have no bearing on its task of statutory construction. Mr. Justice Schaefer explained as follows: (24 Ill. 2d at 268, 269)

> * * * [T]he fact that the legislature reacted promptly to the trial court decision in this case, and made it clear for the future that it did not intend to permit municipalities to annex toll roads without the permission of the Toll Highway Commission, is not controlling. (Ill. Rev. Stat. 1961, chap. 24, pars. 7-1-2, 7-1-10.) Such a statutory change is usually equivocal, suggesting either that the legislative body has effected a conscious change in policy (*West ern National Bank of Cicero* v. *Village of Kildeer,* 19 Ill. 2d 342, 353), or that it has simply prevented the recurrence of an erroneous interpretation (People ex rel. Spitzer v. LaSalle County, 20 Ill. 2d 18, 28). In this case, each of in parties espouses the interpretation appropriate to a decision in its favor.
>
> Since the meaning of the annexation statute is not to be found in abstract definitions or in rubrics of statutory construction, it is necessary to analyze the relevant facts to determine whether annexation of the toll highway is authorized. * * *

In *People* v. *Blanchett,* 33 Ill. 2d 527, 212 N. E. 2d 97, the Illinois Supreme Court had to determine whether an information complied with Section 111-3(a)(4) of the Code of Criminal Procedure of 1963.* Defendant contended that the mere recitation of the date of the offense and the county wherein it occurred did not amount to, "stating the time and place of the offense as definitely as can be done." In rejecting this contention, the Supreme Court relied primarily upon the comments of the drafting committee. The Court consciously overlooked a subse-

* Ill. Rev. Stat. 1959, ch. 24, par. 7-8.

* Ill. Rev. Stat. 1963, ch. 38 par. 111-3(a)(4).

quent amendment to the code. This was explained by Mr. Justice Solfisburg as follows: (33 Ill. 2d at 535).

> We have considered the action of the legislature in passing Senate Bill 740 on June 2, 1965, which substitutes the words "date" instead of "time" and "County" instead of "place" in section 111-3, par. (a)(4). This bill was approved by the Governor on June 18, 1965. While defendant argues that this indicates an intention to change the prior law and the State argues that it is a clarification, we do not believe that this act is an aid in construing the intention of the legislature in passing the original Code. We take this attitude because of the fact that the legislation was enacted while judicial interpretations of the original legislation were still unsettled.

This precedent cannot be ignored. The cases cited in the majority opinion are not to the contrary. They stand for general principles of statutory construction which are well rooted in Illinois law. None, however, stand for the proposition that an amendment, standing by itself, necessarily manifests a legislative intent to clarify rather than to alter the previous statute. In fact, the applicable presumption in Illinois, if any is to be applied, is quite the opposite. *Scribner* v. *Sachs,* 18 Ill. 2d 400, 411, 164 N. E. 2d 481.

It is my opinion that the 1967 amendment is of no aid in divining the meaning of the phrase, "conviction of a felony" as used in 1965 in Section 16a(2). Having taken this position, I shall set forth in the pages to follow, my construction of that phrase, as well as my reasons for settling upon that construction.

The arguments of counsel and my own research have revealed four possible constructions for the phrase, "conviction of a felony." First, and as urged by Dr. Bruni, it might be construed narrowly, to have covered only convictions in Illinois courts of Illinois "felonies." However, such a reading would violate established rules of statutory construction. Each phrase of a statute must be construed in connection with every other provision in that act (*Huckaba* v. *Cox,* 14 Ill. 2d 126, 150 N. E. 2d

832), and in harmony with the purposes sought to be achieved by the enactment of the entire act. (*People* v. *Zimmerman*, 391 Ill. 621, 63 N. E. 2d 850). The phrase which we are construing is immediately preceded by the following paragraph:*

> 1. Conviction of procuring or attempting or aiding to procure such an abortion as was made unlawful at the time under the provisions of the Criminal Code of this State;[1]

I believe that the failure of the Illinois General Assembly to qualify the term, "felony," to the extent that it qualified the term, "abortion," manifested an intent to vest the former with extraterritorial breadth. This conclusion finds support in the purpose sought to be accomplished by Section 16a of the Medical Practice Act, which was not to further punish a convicted felon, but rather to protect the public from medical practitioners who, by their criminal conduct, had exhibited bad character. (*Ramsay* v. *Shelton*, 329 Ill. 432, 160 N. E. 769). In order to give full effect to this purpose, it is essential that both the in-state and the out-of-state conduct of physicians be subjected to the security of the appropriate licensing agency. The people of Illinois could not be adequately protected, if the Department of Registration and Education was able to revoke a physician's license for conviction of murder in Illinois, yet unable to revoke a conviction of murder in another jurisdiction. Therefore, I reject such a construction and conclude that the phrase, "conviction of a felony" embraced convictions of offenses in Illinois, in other states and in the federal courts.

A second possible construction, one which is urged by the Department, is that the phrase, "conviction of a felony," meant the conviction in any jurisdiction of an offense, which, by the definition of the convicting jurisdiction, constituted a "felony." The leading case supporting this construction is *State ex rel. Olson* v. *Langer*, 65 N. 68, 256 N. W. 377, wherein the issue was whether the governor of North Dakota could be

* Ill. Rev. Stat. 1965, ch. 91, par. 16a(1).

barred from holding office because of his conviction of the federal offense of conspiracy, a federal felony, but a North Dakota misdemeanor. The constitution of North Dakota provided that one was ineligible to hold the office of Governor if he had been convicted of "a felony." The *Langer* opinion shall be quoted at length, for it succinctly states a position which has been followed in a number of other states. See Annot. 175 A. L. R. 784 (1948).

> "The respondent further insists that, even if a conviction of felony in the federal court be within the contemplation of section 127, as amended, nevertheless such conviction must be for an offense also made felony by the statutes of the state; that, in the instant case, the conviction in the federal court was for conspiracy under section 88, 18 USCA, supra, while under the statutes of North Dakota, section 9441 et seq., C. L. 1913, such offense is only a misdemeanor, and, accordingly, there was no conviction of felony within the meaning of that term in section 127, as amended. In disposing of this contention, we again must look to the theory and purpose underlying the constitutional provision. As we have shown, the reason for the disqualification therein provided is to protect the state by insuring that only those mentally and morally qualified shall participate in its elections. Acts constituting felony may differ in different jurisdictions. Statutes simply embody the standard established by the public conscience in those jurisdictions where they are enacted. Public sentiment may vary and standards change accordingly. But he who violates the statute must be held to know what he is doing when he does the prohibited act and to know the consequence in the way of penalty. His personal standard cannot be the measure of the character of the act or its depravity. The standard established by the lawmaking body of that jurisdiction must do that. State v. Malusky, 59 N. D. 501, 230 N. W. 735, 71 A. L. R. 190; State ex rel. Beckman v. Bowman, supra. Accordingly, he who sets himself above the law and does an act, regarded by the United States as of so serious a nature as to be prohibited and penalized as a felony, may well be held in that state to be unfit to participate in governmental affairs. See In re Minner, supra.

> We therefore hold that, consistent with the theory and purpose of section 127, as amended, whether an offense for which a conviction is had is a felony must be determined by the law of the jurisdiction where it is committed."

There are several weaknesses in this argument and in the statutory construction which it supports. It is the Illinois General Assembly which is responsible for establishing the qualifications for medical practitioners in Illinois. We should not presume that the General Assembly would delegate its responsibility to another legislative body, unless such intent is manifested by *explicit* statutory language to that effect. Yet, if Section 16a(2) of the Medical Practice Act were construed as the Department and the *Langer* case suggest, it would clearly constitute such an implied delegation. This could also result in glaring inequities. For example, if in 1965 two Illinois physicians had been convicted of possession of marijuana, one in Illinois and one in Texas, under the *Langer* construction, the former would not have lost his license through Section 16a(2), but the latter would have.* Not only would the two physicians be accorded unequal treatment for identical conduct, but in revoking the latter's license, the Illinois Department of Registration and Education would be deferring to the Texas legislature's severe condemnation of the offense of possession of marijuana. I doubt that this was the intention of the General Assembly. Nor do I accept the argument in *Langer* that the basis for disqualification, or for revocation of a license, is the manifest willingness of a party to hold himself above a law which any jurisdiction has deemed of sufficient importance to designate a "felony." Rather, one is disqualified from holding office, or his license to practice his profession is revoked, because his commission of certain acts has reflected a character unsuitable for an office or profession requiring public trust. And it is for the disqualifying or revoking legislature to determine what acts are sufficiently anti-social to evince such an unsuitable character. For these reasons, I reject

* Ill. Rev. Stat. 1965, ch. 38, par. 22-40; Texas Penal Code, Article 725b, pars. 2, 23 & Article 47, par. 53-58.

the reasoning of *Langer* and the construction which has been urged by the Department.

A third possible construction, one which was adopted by the Circuit Court below, is that the phrase, "conviction of a felony," embraced the conviction in any jurisdiction of an offense punishable in like manner as Illinois felonies. Applying this construction, the court held that, since the federal crimes which Dr. Bruni committed were punishable in the alternative by fine or imprisonment, they did not constitute "felonies" for purposes of Section 16a(2) of the Medical Practice Act. I find this construction also unacceptable. It again suggests an implied delegation by the General Assembly of its responsibility for setting standards for medical practice in Illinois. There would exist the same potential for inequitable results. Again, in the absence of *explicit* statutory language to the contrary, I cannot presume this was the intention of the General Assembly in 1965.

The fourth possible construction, one which I would adopt, is that the statutory phrase, "conviction of a felony," referred to the conviction in any jurisdiction of an offense for which there existed an analogous or comparative Illinois offense which was a felony. (*Matter of Donegan*, 282 N. Y. 285, 26 N. E. 2d 260; *State ex rel. Arpagous* v. *Todd*, 225 Minn. 91, 29 N. W. 2d 810; *Elder* v. *County Election Board*, 326 P. 2d 776 (Okla.); *State ex rel. Barrett* v. *Sartorious*, 351 Mo. 1237, 175 S. W. 2d 787 (concurring opinion, 175 S. W. 2d at 791)). This construction focuses primarily upon the conduct engaged in. It requires, as a prerequisite to revocation under Section 16a(2), that the General Assembly has strongly condemned certain conduct by classifying it as a felony though the severe penalty ascribed. I believe that such an interpretation effectuates the statutory purpose of protecting the public from physicians of bad character and also preserves the primacy of the General Assembly's role in that protective scheme.

To apply this construction to the case at bar, one must initially determine whether the federal offenses which Dr. Bruni com-

mitted found any exact counterparts in Illinois criminal law. In Illinois the offense of "conspiracy"* may or may not constitute a felony, depending upon the nature of the offense which was the object of the conspiracy. In 1965 Illinois did not have penal statutes regarding counterfeiting, passing counterfeit bills or possession of counterfeiting apparatus. Under these circumstances, it becomes necessary to examine the gist of the offense in the foreign jurisdiction to determine whether there existed a comparable offense in Illinois in 1965. (*People* v. *Witherspoon*, 27 Ill. 2d 483, 190 N. E. 2d 281; *People* v. *Trent*, 85 Ill. App. 2d 157, 228 N. E. 2d 535). I have made such an examination and conclude that the federal offense of which Dr. Bruni was convicted found its analogue in the following Illinois offense:**

"17-3. Forgery.]

(a) A person commits forgery when, with intent to defraud, he knowingly:

(1) Makes or alters any document apparently capable of defrauding another in such manner that it purports to have been made by another or at another time, or with different provisions, or by authority of one who did not give such authority; or

(2) Issues or delivers such document knowing it to have been thus made or altered; or

(3) Possesses, with intent to issue or deliver, any such document knowing it to have been thus made or altered.

(b) An intent to defraud means an intention to cause another to assume, create, transfer, alter or terminate any right, obligation or power with reference to any person or property.

(c) A document apparently capable of defrauding another includes, but is not limited to,

* Ill. Rev. Stat. 1965, ch. 38, par. 8-2.

** Ill. Rev. Stat. 1965, ch. 38, par. 17-3.

one by which any right, obligation or power with reference to any person or property may be created, transferred, altered or terminated.

(d) Penalty. A person convicted of forgery shall be fined not to exceed $1,000 or imprisoned in the penitentiary from one to 14 years, or both."

This offense was a misdemeanor under Illinois law. I therefore conclude that Dr. Bruni was not convicted of a "felony" as I have construed that term for purposes of Section 16a(2) of the Medical Practice Act. The revocation of his license under that provision was unlawful, and I would affirm the Circuit Court judgment to that effect.

APPENDIX C.

[Opinion of the Circuit Court of Cook County.]

There are two issues before the Court, namely one, does the word "felony" standing alone in the Medical Practice Act include felonies under federal law and two, does the amendment to the Medical Practice Act have a retrospective effect. The opinions of the Attorney General submitted to the then director of the Department of Registration and Education answers the first question quite concisely, and in the opinion of the Court, correctly. I hold that the term felony as used in the then existing Medical Practice Act was restricted to a conviction which would be a felony under Illinois law. Counterfeiting is an offense which may be punishable by a fine. Therefore, it could not be considered a felony under Illinois law. The decision of the Department of Registration and Education revoking Dr. Bruni's license was erroneous at the time.

As to the second question I hold that the amendment to the Medical Practice Act to include convictions under federal law does not have a retrospective effect. A statute should not be given a retrospective effect unless by plain and definite words of the statute such a construction is unavoidable. (People ex rel. Brenza v. Gilbert, 409 Ill. 29.) This presumption in favor of prospective operation is especially applicable where, if given a retrospective operation, it would be invalid as impairing the obligation of contracts or *interfering with vested rights.* (Anderson v. Board of Education of School District No. 91, 390 Ill. 412; Lubezny v. Ball, 322 Ill. Applt. 78.)

The plaintiff argues here that the practice of medicine is a vested right. Some cases cited by the plaintiff hold that the practice of medicine or dentistry is a "property right"; others use language indicating a contrary position. On this question the language of the U. S. Supreme Court is apposite:

> "We need not enter into a discussion whether the practice of law is a 'right' or 'privilege.' Regardless of how the state's grant of permission to engage in this occupation is characterized, it is sufficient to say that a person cannot be prevented from practicing law except for valid reasons. Certainly the practice of law is not a matter of the state's grace." (Schware v. Board of Bar Examiners, 1 Law Edition, 2nd. 796, 801, note 5)

The plaintiff argues further that the constitutional prohibition against ex post facto law is violated by a retrospective application of the latter statute. Although it has been the general principle of law that the ex post facto provision applies only to criminal or penal laws—(People v. Chicago, Burlington & Quincy Railway Company, 323 Ill. 536, 541-2)—the resolution of this question is unnecessary—as is the question of the nature of the property or right inherent in a license to practice medicine.

Suffice to say that the practice of medicine "is not a matter of the state's grace." Further, the provisions of Chapter 131, Section 4 have been extended to civil as well as criminal proceedings and are applicable here. (People v. Speroni, 273 Ill. App. 572, 579.) The legislature has not expressly made the new act retrospective—if, indeed, it ever lawfully could. I, therefore, hold that the present act can be construed only as providing prospective and not retrospective application. The decision of the Department of Registration and Education will be reversed.